IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.1463 SB OF 2001

DATE OF DECISION: MAY 23, 2007

Dole Ram

.....Appellant

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Rajeev K. Kapila &
Ms. Satpreet K. Kapila, Advocates,
for the appellant.

Mr. N. K. Sanghi, Addl.A.G., Punjab,
for the State.

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RANJIT SINGH, J. (ORAL)

The appellant stands convicted for an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”) and sentenced to suffer RI for 10 years with a fine of Rs.one lacs. The appellant is further directed to undergo RI for two years in case of default of payment of fine. He accordingly has filed this appeal impugning the order of his conviction and award of sentence.

The facts, in brief, are that on 6.1.2000, Inspector Pritam Singh, S.H.O., Police Station Nangal, accompanied by other police officials was on a

patrolling duty towards Nangal Dam. In the vicinity of Chief Restaurant, the appellant was seen coming from the opposite direction while carrying a bag in his right hand. When the appellant attempted to turn back, the police party got suspicious and accordingly apprehended him. The appellant disclosed his name, on being questioned by the Inspector. He also apprised the appellant that he suspected that the appellant was carrying some objectionable substance in the bag, which he wanted to search. The appellant was given an option if he desired to be searched in the presence of a Magistrate or a Gazetted Officer. The appellant opted for his search before a Magistrate. Having recorded a separate statement in this regard, which was signed by the appellant in Hindi, Head Constable Ram Pal was sent to call Naib Tehsildar-cum-Executive Magistrate, Nangal, for carrying out the search of the appellant. Naib Tehsildar Harbhajan Singh accordingly reached the scene of incident. He disclosed his status, identity and the purpose for which he was called. The appellant agreed to be searched before the Executive Magistrate and consent memo in this regard was prepared. This was also signed in Hindi by the appellant as well as by the Executive Magistrate. One Gurnaib Singh had earlier been joined as an independent witness by the police party. On a search of the bag, 1 Kg. Of charas was recovered. Two samples of 10 grams each were separated and made into two separate parcels. Remaining charas was put into the tin box and all the three packets were sealed and seal `PS' of Inspector Pritam Singh and that of executive Magistrate with seal `HS' put on the parcels. These 3 parcels were taken in possession vide a recovery memo Ex.PC. The

other formalities in regard to investigation were also completed, leading to filing of challan.

The case of prosecution was supported by police officials and Naib Tehsildar Harbhajan Singh (PW2). Then evidence and circumstances appearing against the appellant were put to him under Section 313 Cr.P.C. Appellant pleaded that he had come to Nangal to see his relations and was to proceed to Kulu. As per the appellant, he slept at the Bus Stand as no bus was available and that he was picked up by the police from the Bus Stand and implicated in the present case falsely. He examined two defence witnesses in support of his plea. The Court after analyzing the evidence, came to conclude that the prosecution had succeeded in proving the offence against the appellant and accordingly found him guilty and sentenced him as already noticed.

Learned counsel for the appellant has made a solitary submission before me to the effect that the quantity allegedly recovered from the appellant can not be treated as commercial in view of the notification dated 19.10.2001. Relying upon the said notification, the counsel would say that 1 Kg. of charas allegedly recovered from the appellant is to be treated as a non-commercial quantity. In this regard, the counsel has referred to the case of ***Basheer @ N.P.Basheer Vs. State of Kerala,*** 2004 (1) RCR (Criminal) 1008. After noticing the object reasons for amending Act 9 of 2001, the Hon'ble Supreme Court in this case has observed that sentencing structure has undergone a drastic change upon coming into effect the notification. This amendment has introduced a concept of commercial quantity in relation to narcotic drugs and

psychotropic substances. The relevant observations of the Hon'ble Supreme Court in this regard are as under:-

> "5. As a consequence of the Amending Act coming into force on 2nd October, 2001, the sentencing structure underwent a drastic change. The Act introduced the concept of "commercial quantity" in relation to narcotic drugs or psychotropic substances by adding clause (viia) in Section 2, which defines this term as any quantity greater than a quantity specified by Central Government by notification in the official gazette. Further, the expression "small quantity" is defined in Section 2, sub-section (xxiiia), as any quantity lesser than the quantity specified in the notification. Under the rationalised sentencing structure, the punishment would vary depending on whether the quantity of offending material was "small quantity", "commercial quantity" or something in between. This is the effect of the rationalisation of sentencing structure carried out by the Amending Act, 9 of 2001, in Section 27. A notification was issued on 9th October, 2001 specifying in respect of 239 Narcotic Drugs and Psychotropic Substances, as to what would be "small quantity" and "commercial quantity"."

It is not disputed that the provisions of this notification, amending the provisions of the Act would be applicable to the case of the appellant. The case against the appellant was decided on 29.10.2001 and this notification has come into effect from 19.10.2001. The trial Court has not taken into consideration this

amending notification. The sentence awarded to the appellant was bound to be rationalised if this notification has been taken into consideration. The Court would not have been under any obligation to award any minimum sentence. Appellant has been sentenced to ten years R.I. as there was no option before the Court to award any less sentence than the minimum prescribed. That option would be available if the quantity of 1 Kg. charas is found to be non-commercial in nature. To say that quantity of 1 Kg. Charas would be non-commercial, counsel has referred to ***Ratto Vs. State of H.P.,*** 2004 (1) RCR (Criminal) 501. In this case, Full Bench of Himachal Pradesh High Court, after analyzing the provisions, came to hold that commercial quantity, as mentioned in notification, would mean any quantity greater than 1 kg charas. The Full Bench has held as under:-

> "19. In our considered view quantity greater than, has to be given its simple and grammatical meaning. Reason is that there is no ambiguity in these words. Nor they can be given any other meaning than the one as are understood in the common parlance. We further feel that these words are not capable of being interpreted in any other manner except that commercial quantity as notified by the Central Government has to be greater than or to say more than/bigger than/larger than one Kg.
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> 20. For holding so, we are of the view that legislature was well aware when the words "greater than "were incorporated in the sub-section as also about its meaning. There can hardly be any other purpose, import or

> meaning that can be attributed to the words "quantity greater than" used in the aforesaid sub-section. Thus, there is no ambiguity while examining this provision of law."

In fact, the Full Bench in Ratto's case (supra) examined the issue in detail and further held that there is no ambiguity in the language of Section 2(viia) and simple and literal meaning has been given to the words "Quantity greater than". The relevant observations of the Full Bench in this regard are as under:-

> "As already noted there is hardly any ambiguity, muchless conflict between Section 2(viia) and the notification as extracted here-in-above for determination of what would be the commercial quantity. By virtue of powers conferred under sub-section (viia) of Section 2, Central Government is authorised to notify as to what would be the commercial quantity. Because the "Commercial Quantity" on a plain reading of its definition amongst other things has to be" ..... greater than the quantity specified by the Central Government by notification ....." Under 2001 Act notification supra was issued specifying the quantity for the purpose of Section 2 (viia) of the Act. A perusal of this notification indicates that quantity specified is one kilogram. Various columns of the notification extracted hereinabove have to be read in conjunction with the substantive provision of Section 2(viia) of the Act. This also puts a harmonious construction on both, notification as well as Section 2 (viia) of the Act. While determining

> the quantity under this Sub-section, it has to be greater than one Kg. There is hardly any doubt regarding either the words one Kg. or the "commercial quantity" which has to be "greater than", which in our considered view would always mean any quantity more than/bigger than/larger than one Kg. We are further of the view that this provision, and for that matter, notification admits of no other interpretation on its reading. Thus, it cannot be said that one Kg. would be the commercial quantity for the purpose of Section 2 (viia), as added by 2001 Act."

Based on the above position, learned counsel for the appellant submits that quantity allegedly recovered from the appellant would be non-commercial and as such, there would now be legal compulsion to award any minimum sentence as prescribed in the Act.

Mr.N.K.Sanghi, appearing on behalf of the State, has, however, contested this proposition and would say that quantity of 1 Kg. of charas would be a commercial quantity and not a non-commercial one. In ***Mander Singh Vs. State of Punjab,*** 2005 (2) RCR (Criminal) 634, recovery of 2.5 Kgs. of opium was stated to be a non-commercial quantity on the analogy as drawn in the above noted Full Bench decision. No contrary view has been placed before me in this regard. If the quantity allegedly recovered in the present case is considered non-commercial, then the requirement of awarding minimum sentence in the case would not arise.

In view of the notification dated 19.10.2001, quantity upto 1 Kg. of charas would fall in the category of non-commercial quantity.

Any quantity greater than the quantity referred to in the notification would more appropriately be a commercial quantity. Though the appellant has been convicted and sentenced, to suffer 10 years RI as this was the minimum sentence awardable, which is no more a requirement under law. Since it is found that the quantity recovered from the appellant is non-commercial, there would be no requirement for the Courts to award any minimum sentence to him. The appellant otherwise, as per the custody certificate produced before the Court, has undergone 6 years 9 months and 26 days of the sentence as on 28.2.2007, excluding the period of paroles. Accordingly, by now the appellant has undergone almost 7 years of the sentence awarded to him. The sentence awarded to the appellant is reduced to the period already undergone which appears to be just and proper having regard to the facts and circumstances of the case. The conviction of the appellant for the offence does not call for any interference as no submission on merits was made.

Subject to the above modification in the sentence, the appeal is dismissed. The bail bonds, if any, furnished by the appellant would stand discharged.

May 23, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**